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9 Spigen, Inc.*

10 **UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA**

12 SPIGEN, INC., a California corporation,

CASE No.:

13 Plaintiff,

14 v.
15 **PLAINTIFF'S COMPLAINT FOR
1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT;
3. TRADEMARK INFRINGEMENT;
AND
4. UNFAIR COMPETITION**

16 SPIN CENTRAL CITY LLC, a New
17 York limited liability company; SAIMA
18 NADEEM, an individual; DOES 1
through 10, inclusive,

19 **JURY TRIAL DEMANDED**

Defendants.

21 Plaintiff SPIGEN, INC. (hereinafter referred to as "Plaintiff" or "SPIGEN"),
22 for its Complaint against Defendants SPIN CENTRAL CITY LLC and SAIMA
23 NADEEM (hereinafter collectively referred to as "Defendants"), alleges as follows:
24

26 **JURISDICTION AND VENUE**

27 1. This action arises under copyright infringement and vicarious and/or
28 contributory copyright infringement under the Copyright Act of 1976, Title 17

1 U.S.C. § 101 *et seq.*, trademark infringement under 15 U.S.C. § 1114 *et seq.*, and
2 unfair competition under Cal. Bus. & Prof. Code § 17200.

3 2. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§
4 1331 and 1338(a) and (b). Pursuant to 28 U.S.C. § 1338(b), this Court has
5 supplemental jurisdiction over Plaintiff's state law claims, insofar as those claims are
6 joined with substantial and related claims under the Copyright Act and Lanham Act.
7 This Court also has supplemental jurisdiction under 28 U.S.C. § 1337(a), in that all
8 of Plaintiff's claims arise out of a common nucleus of facts.

9 3. This Court has personal jurisdiction over Defendants by virtue of their
10 transacting, doing, and soliciting business in this District, and because a substantial
11 part of the relevant events occurred in this District.

12 4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b),
13 1391(c), 1391(d), and 1400(b).

PARTIES

15 5. Plaintiff, SPIGEN, INC. (hereinafter "Spigen" or "Plaintiff"), is a
16 corporation organized and existing under the laws of the State of California, with its
17 principal place of business at 9975 Toledo Way #100, Irvine, CA 92618.

18 6. Plaintiff is informed and believes, and thereon alleges, that defendant,
19 SPIN CENTRAL CITY LLC (“SCC”) is a limited liability company organized and
20 existing under the laws of the State of New York.

21 7. Plaintiff is informed and believes, and thereon alleges, that defendant,
22 SAIMA NADEEM (“NADEEM”) (“SCC” and “NADEEM” hereinafter collectively
23 referred to as “Defendants”) is an individual, residing at 574 N. 24th street 10D,
24 Rogers, AR 72756.

25 8. Plaintiff is unaware of the true names and capacities, whether
26 individual, corporate, or otherwise, of the Defendants named herein as Does 1
27 through 10, inclusive, but is informed and believes, and thereon alleges, that each of
28 the fictitiously named defendants engaged in, or is in some manner responsible for,

1 the wrongful conduct alleged herein. Plaintiff therefore sues these defendants by
2 such fictitious names and will amend this complaint to state their true names and
3 capacities when such names have been discovered.

4 **FACTS COMMON TO ALL CLAIMS**

5 9. Plaintiff is a leading manufacturer of cell phone cases and well known
6 for its quality products. Plaintiff has invested a great deal of time, money and effort
7 in developing various cell phone cases and Plaintiff has spent substantial sums on
8 marketing the cases and securing a number of intellectual property rights.

9 10. Plaintiff owns a number of copyrights for its cell phone cases. Plaintiff
10 has applied for and received a number of United States Copyright Registrations for
11 its product photos (“Copyrighted Photos”).

12 11. Prior to the acts complained of herein, Plaintiff has sold cell phone cases
13 using the Subject Photos to numerous parties and customers in the industry.

14 12. Plaintiff is the owner of the trademark “SPIGEN” (the “SPIGEN Mark”)
15 and has continuously used that trademark in connection with cell phone cases, et al.
16 in commerce throughout the United States and the world since at least as early as
17 2011. In 2013, Plaintiff applied for federal registrations of the SPIGEN Mark with
18 the United States Patent and Trademark Office (the “USPTO”), which registrations
19 were issued to Plaintiff on June 17, 2014 (USPTO Registration Nos. 4551216 and
20 4551217 and in International Classes 009 and 035, including cell phone cases).

21 13. Defendant SPIN CENTRAL CITY LLC has sold a number of products
22 on Sears.com and ShopYourWay.com under the seller name of “Spin Central City
23 LLC”.

24 14. Defendant SAIMA NADEEM has sold a number of products on
25 Sears.com and ShopYourWay.com under the seller name of “OliveElect”.

26 15. Plaintiff is informed and believes and thereon alleges that, following
27 this distribution of the Spigen Cases and products bearing the SPIGEN MARK using
28 the Copyrighted Photos, Defendants and DOE Defendants created, manufactured,

1 caused to be manufactured, imported, distributed, and/or sold cell phone cases using
2 product photos (hereinafter "Subject Photos") without Plaintiff's authorization which
3 are identical, or substantially similar, to Plaintiff's Copyrighted Photos.

4 16. Defendant SPIN CENTRAL CITY LLC has posted numerous product
5 listings on Sears.com and ShopYourWay.com using the Subject Photos without
6 Plaintiff's authorization which are identical, or substantially similar, to Plaintiff's
7 Copyrighted Photos. *See* Exhibit "A" for examples of the infringing Subject Photos
8 by Defendant SPIN CENTRAL CITY LLC.

9 17. Defendant SAIMA NADEEM has posted a number of product listings
10 on Sears.com and ShopYourWay.com using the Subject Photos without Plaintiff's
11 authorization which are identical, or substantially similar, to Plaintiff's Copyrighted
12 Photos. *See Exhibit "B"* for examples of the infringing Subject Photos by Defendant
13 SAIMA NADEEM.

14 18. Without Plaintiff's permission or authorization, Defendant SPIN
15 CENTRAL CITY LLC has posted and sold a number of product listings bearing the
16 mark "SPIGEN" on Sears.com and ShopYourWay.com for the purpose of selling its
17 infringing products and sales revenue has been generated through sales of the
18 infringing products. *See* Exhibit "C" for examples of the infringing listings by
19 Defendant SPIN CENTRAL CITY LLC.

19. Defendant CENTRAL CITY LLC' infringing listings and Plaintiff's
20 infringed copyright registration numbers are set forth in Exhibit "D".
21

22 20. Defendant SAIMA NADEEM's infringing listings and Plaintiff's
23 infringed copyright registration numbers are set forth in Exhibit "E".

24 21. Defendants' infringing listings are numerous and thus, their acts
25 constitute nothing but willful infringements of Plaintiff's copyrights and trademark.

FIRST CLAIM FOR RELIEF

27 (For Copyright Infringements of the Copyrighted Photos – against all Defendants)

28 22. Plaintiff incorporates herein by reference all the allegations of

1 | paragraphs 1 through 21, inclusive.

2 23. Plaintiff is informed and believes and thereon alleges that Defendants
3 and DOE Defendants had access to Plaintiff's cell phone cases and the Spigen Cases
4 distributed on the market, including access to its Copyrighted Photos.

5 24. Plaintiff is informed and believes and thereon alleges that Defendants
6 and DOE Defendants infringed Plaintiff's Copyrighted Photos by creating, making
7 and/or developing directly infringing and/or derivative works from the Copyrighted
8 Photos and by producing, distributing and/or selling cell phone cases using product
9 photos which infringe the Copyrighted Photos. Defendants' product photos are
10 identical to or at least substantially similar to Plaintiff's Copyrighted Photos as
11 shown in Exhibits "A" and "B".

12 25. Defendants' infringing listings and Plaintiff's infringed copyright
13 registration numbers are set forth in Exhibits "D" and "E".

14 26. Due to Defendants and DOE Defendants' acts of infringement, Plaintiff
15 has suffered substantial damages in an amount to be established at trial.

16 27. Due to Defendants and DOE Defendants' acts of infringement, Plaintiff
17 has suffered general and special damages in an amount to be established at trial.

18 28. Due to Defendants and DOE Defendants' acts of copyright infringement
19 as alleged herein, Defendant has obtained profits they would not otherwise have
20 realized but for their infringements of the Copyrighted Photos.

21 29. Plaintiff is informed and believes and thereon alleges that the
22 infringements of its Copyrighted Photos were willful, reckless, and/or in blatant
23 disregard for its rights as a copyright holder such that a finding of willful copyright
24 infringement is warranted, subjecting Defendants and DOE Defendants to liability
25 for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up
26 to one hundred fifty thousand dollars (\$150,000.00) per infringement.

SECOND CLAIM FOR RELIEF

28 (For Vicarious and/or Contributory Copyright Infringements of

the Copyrighted Photos – against all Defendants)

2 30. Plaintiff incorporates herein by reference all the allegations of
3 paragraphs 1 through 29, inclusive.

4 31. Plaintiff is informed and believes and thereon alleges that Defendants
5 and DOE Defendants knowingly induced, participated in, aided and abetted in and
6 profited from the illegal reproduction and/or subsequent sales of the infringing
7 product photos identical to the Copyrighted Photos as alleged herein.

8 32. Defendants' infringing listings and Plaintiff's infringed copyright
9 registration numbers are set forth in Exhibits "D" and "E".

10 33. Plaintiff is informed and believes and thereon alleges that Defendants
11 and DOE Defendants are vicariously liable for the infringement alleged herein
12 because they had the right and ability to supervise the infringing conducts and
13 because they had a direct financial interest in the infringing conducts.

14 34. By reason of the Defendants and DOE Defendants' acts of contributory
15 and vicarious infringement as alleged above, Plaintiff has suffered and will continue
16 to suffer substantial damages to its business in an amount to be established at trial, as
17 well as additional general and special damages in an amount to be established at trial.

18 35. Due to Defendants and DOE Defendants' acts of copyright infringement
19 as alleged herein, Defendants and DOE Defendants have obtained direct and indirect
20 profits they would not otherwise have realized but for their infringement of the
21 Copyrighted Photos. As such, Plaintiff is entitled to disgorgement of Defendants and
22 DOE Defendants' profits directly and indirectly attributable to the infringement of
23 the Copyrighted Photos, in an amount to be established at trial.

24 36. Plaintiff is informed and believes and thereon alleges that Defendants
25 and DOE Defendants have committed acts of copyright infringement, as alleged
26 above, which were willful, intentional and malicious, which further subjects
27 Defendants and DOE Defendants to liability for statutory damages under Section
28 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars

1 (\$150,000) per infringement.

2 **THIRD CLAIM FOR RELIEF**

3 (For Trademark Infringements of the SPIGEN Mark – 15 U.S.C. § 1114 – against
4 Defendant SPIN CENTRAL CITY LLC)

5 37. Plaintiff incorporates herein by reference all the allegations of
6 paragraphs 1 through 36, inclusive.

7 38. Plaintiff is the owner of the federally registered marks for the SPIGEN
8 Marks and has expended an enormous amount of time, effort and expense to promote
9 Plaintiff's products in connection with the marks.

10 39. Defendant SPIN CENTRAL CITY LLC and DOE Defendants'
11 intentional, unauthorized use of the SPIGEN Marks is likely to confuse the
12 consumers into believing Defendant's products and the marketing and promotion
13 thereof are endorsed, sponsored and/or authorized by Plaintiff.

14 40. Defendant SPIN CENTRAL CITY LLC and DOE Defendants' acts
15 constitute trademark infringements under 15 U.S.C. § 1114.

16 41. As a proximate result of Defendant SPIN CENTRAL CITY LLC and
17 DOE Defendants' wrongful conducts, Plaintiff is entitled to recover Defendants'
18 profits and Plaintiffs damages, which may be trebled, as well as costs of this action
19 pursuant to 15 U.S.C. § 1117(a). In addition, Defendant SPIN CENTRAL CITY
20 LLC and DOE Defendants' willful and unlawful conducts render this case to be
21 exceptional and thus, Plaintiff is entitled to recover its attorney's fees under 15
22 U.S.C. § 1117(a).

23 **FOURTH CLAIM FOR RELIEF**

24 (For State Law Unfair Competition – Cal. Bus. & Prof. Code § 17200 – against
25 Defendant SPIN CENTRAL CITY LLC)

26 42. Plaintiff incorporates herein by reference all the allegations of
27 paragraphs 1 through 41, inclusive.

28 43. Defendant SPIN CENTRAL CITY LLC and DOE Defendants'

1 wrongful actions hereinabove alleged constitute unfair competition and unfair
2 business practices under California Business & Professions Code § 17200 et seq.

3 44. Defendant SPIN CENTRAL CITY LLC and DOE Defendants'
4 intentional and wrongful activities have caused and will continue to cause Plaintiff
5 irreparable harm, for which Plaintiff has no adequate remedy at law, entitling
6 Plaintiff to preliminary and permanent injunctive relief. Plaintiff is also entitled to an
7 award of restitution to the fullest extent of the law.

PRAYER FOR RELIEF

9 WHEREFORE, in consideration of the foregoing, Plaintiff prays for relief as
10 follows:

11 1. For ordering Defendant SPIN CENTRAL CITY LLC to deliver to
12 counsel for Plaintiff for destruction all infringing products;

13 2. For compensatory damages in an amount to be determined upon proof at
14 trial;

15 3. For disgorgement of profits and restoration of amounts by which
16 Defendants were unjustly enriched;

17 4. For an award of all profits of Defendants plus all losses of Plaintiff, in
18 an amount to be determined at trial;

19 5. For an injunctive relief prohibiting Defendants from infringing
20 Plaintiff's copyrights in any manner;

21 6. That Defendants, and each of them, account to Plaintiff for their profits
22 and any damages sustained by Plaintiff as a result of the conduct alleged herein;

23 7. For granting Plaintiff an award of three times its compensatory damages
24 or Defendants' profits, whichever is greater pursuant to 15 U.S.C. § 1117;

25 8. For statutory damages as available under the Copyright Act if elected
26 before final judgment;

27 9. For costs of suit including reasonable attorney's fees, as provided by the
28 Copyright Act;

10. For prejudgment interest as provided by law; and
11. For such other and further relief as the Court deems just and proper.

Dated: July 13, 2015

Respectfully submitted,
East West Law Group

By: /s/ Heedong Chae
HeeDong Chae
Chong Roh
Attorneys for Plaintiff
Spigen, Inc.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: July 13, 2015

East West Law Group

By: /s/ Heedong Chae
HeeDong Chae
Chong Roh
Attorneys for Plaintiff
Spigen, Inc.